

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1407

To be argued by
JONATHAN J. SILBERMANN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

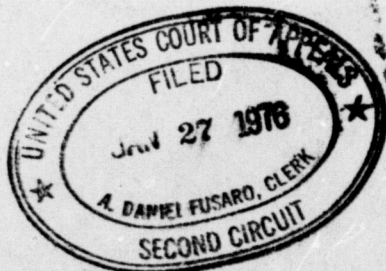
MICHAEL GOGARTY,

Defendant-Appellant.

Docket No. 75-1407

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
MICHAEL GOGARTY
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

Felony <input checked="" type="checkbox"/> MAGISTRATE	U.S. VS. <u>DEVORKIN, MICHAEL J.</u>	10/10/75	0981
Offense <input type="checkbox"/> 0208 1	Disp./Sentence	No. of 01	Defendants
U.S. CODE SECTION	OFFENSES	COUNTS	MAGR. CASE NO.
ARGES 18:871	Threats against President.	1,3	
18:111	Assault on Fed. Officer.	2	
U.S. Attorney or Asst.	Defense: <input type="checkbox"/> CJA, <input type="checkbox"/> Ret; <input type="checkbox"/> Waived, <input type="checkbox"/> Self, <input type="checkbox"/> None, <input type="checkbox"/> Other, <input type="checkbox"/> LPD, <input type="checkbox"/> LCD		
EYS Michael S. Devorkin, AUSA	Patrick F. Broderick-38-08 Bell Blvd.		
(212) 791-1926	Bayside, N.Y. (229-6070)		
ARREST	INDICTMENT <input checked="" type="checkbox"/> 10-10-75	ARRAIGNMENT	TRIAL
<input type="checkbox"/> U.S. Custody Began on Above Charges	<input type="checkbox"/> High Risk Defn. & Date Design'd	<input type="checkbox"/> Trial Set For	<input type="checkbox"/> Voir Dire
<input type="checkbox"/> Prosecution Deferred	<input type="checkbox"/> Waived	<input type="checkbox"/> 1st Plea	<input type="checkbox"/> Trial Began
	<input type="checkbox"/> Superseding Indict/Info	<input type="checkbox"/> Not Guilty	<input type="checkbox"/> Trial Ended
		<input type="checkbox"/> Nolo	<input type="checkbox"/> Dismissed
		<input type="checkbox"/> Not Guilty	<input type="checkbox"/> Convicted
		<input type="checkbox"/> Nolo	<input type="checkbox"/> Acquired
		<input type="checkbox"/> Guilty	<input type="checkbox"/> Dismissed: WOP;
			<input type="checkbox"/> Nolo/Discontinued
Search Warrant	Issued	DATE	INITIAL/No.
Summons	Return	DATE	INITIAL/No.
Arrest Warrant	Served	DATE	INITIAL/No.
COMPLAINT	07-14-75	CJH 080G	
OFFENSE (In Complaint)			
OUTCOME			
<input type="checkbox"/> Dismissed			
<input type="checkbox"/> Held for District GJ			
<input type="checkbox"/> Held to Answer to U. S. District Court			
AT:			
Magistrate's Initials			
* Show last names and suffix numbers of other defendants on same indictment/information			
DATE	PROCEEDINGS		
10-10-75	Filed indictment.		
10-14-75	Deft. (atty. present) Pleads not guilty. Bail fixed at \$10,000 cash or surety. Deft. continued remanded. Trial set for Thursday 10/16/75 at 2 p.m. in Rm. 506, before Cannella, J. Filed notice of readiness for trial filed in court 10/14/75.		
10-16-75	Filed notice of appearance by Patrick F. Broderick		
10-20-75	Filed financial affdvt.		
10-23-75	Filed waiver of trial by jury		
10-24-75	Filed Govt's trial memorandum....Trial begun w/o a jury..Trial concluded, the Court renders a verdict of not guilty as to cts. 1 & 3 and GUILTY as to ct. 2..P.S.I. ordered. Sentence Nov. 25-75 10a.m. Deft remanded in lieu of bail.....Duffy, J.		
11-25-75	Filed Judgment (Atty. Patrick F. Broderick, present) The deft is committed for imprisonment for a period of TWO YEARS on count 2.....Duffy, J... Ent. 11-28-75-----		
12-4-75	Filed order that U.S. Marshal for SDNY escort deft to gravesite of his brother located at St. Raymond's Cemetery, Bronx, N.Y.***Duffy, J...		
(See Over)			

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY		
		(a)	(b)	(c)
12-4-75	Filed notice of appeal from Judgment of 11-25-75..Copy given to U.S. Atty. and deft C O Patrick F. Broderick, Esq. 38-08 Bell Blvd. Bayside, N.Y.			

MD:ee
75-2436
n-958

75 CRIM. 981

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

- v - :

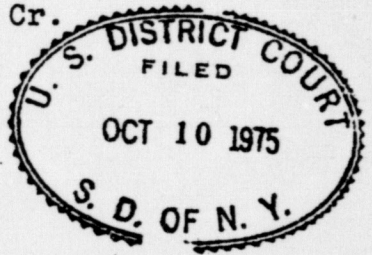
MICHAEL J. GOGARTY, :

Defendant. :

-----x

INDICTMENT

75 Cr.



COUNT ONE

The Grand Jury charges:

On or about March 11, 1973, in the Southern District of New York, MICHAEL J. GOGARTY, the defendant, unlawfully, wilfully and knowingly did make a threat to take the life of and to inflict bodily harm upon the President of the United States.

(Title 18, United States Code, Section 871)

COUNT TWO

The Grand Jury further charges:

On or about March 11, 1973, in the Southern District of New York, MICHAEL J. GOGARTY, the defendant, unlawfully, wilfully and knowingly did forcibly assault, resist, oppose, impede, intimidate and interfere with an officer of the United States Secret Service while said officer was engaged in the performance of his official duties.

(Title 18, United States Code, Section 111)

MD:ee
75-2436
n-958

COUNT THREE

The Grand Jury further charges:

On or about July 14, 1975, in the Southern District of New York, MICHAEL J. GOGARTY, the defendant, unlawfully, wilfully and knowingly, did make a threat to take the life of and to inflict bodily harm upon the President of the United States.

(Title 18, United States Code, Section 871)

Curran C. Watson
FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

MICHAEL J. GOGARTY

Defendant.

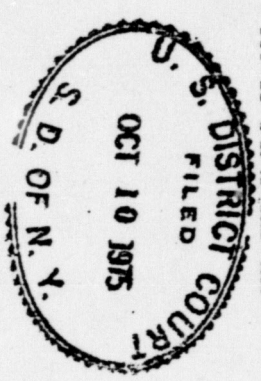
INDICTMENT

In violation of Title 18,
United States Code, Sections
871 and 111.

PAUL J. CURRAN
United States Attorney.
A TRUE BILL

James H. Watson
Foreman.

FPI-SS-2-18-71-20M-6950



Decece 10, 1975 - Trial Indictment. *Cannella*
October 14, 1975. *Walt (Atty. Patrick Broderick)*
Heads not guilty. Bail fixed at \$10,000.
Continued / Remanded in lieu of bail. (Court)
Trial set for Thursday, 10/16/75 at
2pm in Room 506, before Cannella
Deferred Cancellas for all purposes.
Cannella

OCT 24 1975 [ATTORNEY PRESENT] DEFENDANT WAIVES
TRIAL BY JURY. JURY WAIVER SIGNED & FILED.
TRIAL BEGINS w/o A JURY. TRIAL CONCLUDED.
THE COURT RENDERES A VERDICT OF NOT GUILTY AS
TO COUNTS 1 + 3 AND GUILTY AS TO COUNT 2.
RE-SENTENCE REPORT ORDERED. SENTENCE ADJOURNED
UNTIL NOVEMBER 25, 1975 AT 10 AM.
DEFT REMANDED IN LIEU OF BAIL.

DUFFY, J.

11/25/75 Dept (Watkins F. J. Brouncker of Cannella) *Ben*
Remanded to (2) Rooms on (1) (1)
Dept Attorney of (1) Dept 1 to appeal.

Walt *Walt*

1 dhe

77

2

3

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5

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THE COURT: On the competent evidence in this
case, I find the defendant not guilty of counts 1 and 3, but
guilty on count 2.

DATE	ACTION
3/13/73	Complaint filed, defendant presented under C.R. 5 & advised of rights. Legal Aid assigned. Hearing date set for 3/21/73, defendant remanded into the custody of U.S. Marshal in lieu of ^{6K.} 7,500 cash or surety.
4/23/73	Defendant released on his own recognizance on deferred prosecution.
7/1/75	Proceedings dismissed by government

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK

PROVISIONAL RELEASE AS
DEFERRED PROSECUTION

Magistrate's Docket No. 73-335

TO: MICHAEL GOGARTY

You are accused of committing an offense against the United States, to wit: 18 U.S.C. §871, Threatening the Life of the President. However, after investigation it has been determined that the interests of the United States and your own interests will be best served by deferring prosecution in this District to permit you to enter an approved psychiatric treatment program. Prosecution will be deferred during the term of your good behavior and satisfactory participation in the approved program for the period of twelve months from the date of the signing of this agreement. The terms and conditions constituting your good behavior are as follows:

- (a) You must refrain from the violation of any State or Federal penal laws.
- (b) You must refrain from the use of all drugs and alcohol except those specifically authorized by the doctors.
- (c) You must work or attend any clinic as directed by the psychiatrist. When out of work or unable to attend the clinic, notify the psychiatrist at once.
- (d) You may not leave or remain away from the city or town where you reside without permission of the psychiatrist. Notify them at once if you intend to change your address.
- (e) You must report for treatment as instructed, at least once a week. If, for any unavoidable reason, you are unable to do so, communicate with the psychiatrist or treatment center without delay. *If you do not appear, the clinic must notify the U.S. Attorney immediately.*
- (f) You must comply with the rules of your treatment program, including its rules requiring attendance. If hospitalization is required, you must enter.

me LSL

This provisional release is subject to your being found acceptable by the Tremont Crisis Clinic, Bronx States Hospital for admission to an approved treatment program.

The United States Attorney may at any time revoke or modify any condition of this provisional release or change the period of supervision. Should you violate any of the foregoing conditions or cease to be a satisfactory participant in the approved program, the United States Attorney may at any time, within the twelve-month period of supervision, initiate prosecution for this offense.

If, upon the completion of your period of supervision, a written report from the psychiatric clinic is received to the effect that you have fully complied with all of the above conditions and have remained a satisfactory participant in the approved program, no prosecution will be instituted in this District for the above offense.

Dated:

April 23, 1973

Whitney Webb Seymour, Jr.
United States Attorney

By:

Bart M. Schwartz

The undersigned hereby consent to the foregoing and expressly waive any and all rights to a speedy trial and the Second Circuit Rules Regarding the Prompt Disposition of Criminal Cases or other pertinent provisions, consent to the adjournment of all pending proceedings, and agree to permit disclosure to the United States Attorneys office consistent with Section 408 of Public Law 92-255 and regulations issued pursuant thereto of such treatment records as are necessary to determine compliance with the conditions governing deferral of prosecution in this case.

Lawrence S. Gail
Attorney for Defendant

Michael J. Grogan
Defendant

The foregoing waiver of the defendant's right to a speedy trial is approved under Rule 5(b) of the Second Circuit Rules Regarding the Prompt Disposition of Criminal Cases.

Dated:

APR 23 1973

Samuel L. Smith
Magistrate

BMS:bc

73-

*Legal Aid
assigned*

Approved: *Bart M. Schwartz*
BART M. SCHWARTZ
Assistant United States Attorney

Before: HONORABLE MARTIN D. JACOBS
United States Magistrate,
Southern District of New York

73-1568

*Warrant issued at
11:05 a.m.*

UNITED STATES OF AMERICA

- v -

MICHAEL GOGARTY,

Defendant.

:
:
: COMPLAINT
:
: Violation of
18 U.S.C. §111
:

-----x
SOUTHERN DISTRICT OF NEW YORK, ss."

THOMAS W. DOYLE, being duly sworn, deposes and
says that he is a Special Agent of the United States
Secret Service, and charges as follows:

On or about the 11th day of March, 1973, in

Special Agent of the United States
Secret Service, and charges as follows:

On or about the 11th day of March, 1973, in the Southern District of New York, MICHAEL GOGARTY, the defendant, unlawfully, wilfully and knowingly did assault, resist, oppose, impede, intimidate and interfere with THOMAS W. DOYLE and other Special Agents of the Secret Service while these agents were engaged in and on account of their performance of their official duties as Special Agents.

The bases for deponent's knowledge and for the foregoing charge are, in part, as follows:

1. Investigation conducted in the discharge of your deponent's duties;

2. After advising the defendant that he was under arrest on the above date for threatening the life of President Nixon, the defendant physically attacked me and the other agents present at that time.

WHEREFORE, deponent prays that a warrant may issue for the apprehension of the above named defendant and that he may be arrested and imprisoned, or bailed, as the case may be.

Thomas W. Doyle
THOMAS W. DOYLE

Sworn to before me this
7 day of Mar,
1973.

Michael G. Tardella
US Mag

DO NOT WRITE IN THESE SPACES

Subscribed and sworn to before me on this 7th day of March 1973 at New York City, New York by Michael G. Tardella, U.S. Magistrate, Southern District of New York.

DES:rs

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK.

PROVISIONAL RELEASE AS
DEFERRED PROSECUTION

Magistrate's Dockets Nos. 73-335
73-1568
TO: MICHAEL GOGARTY

In criminal complaints filed before the United States Magistrate you are accused of committing offenses against the United States, to wit: Violations of 18 U.S.C. §111, (Assault a Federal Officer) and 18 U.S.C. §871 (Threatening the life of the President). However, after investigation, it has been determined that the interests of the United States and your own interests will be best served by deferring prosecution in this District to permit you to enter an approved hospital alcoholic treatment program. Prosecution will be deferred during the term of your good behavior and satisfactory participation in the approved program for the period of twelve months from the date of the signing of this agreement. The terms and conditions constituting your good behavior are as follows:

- (a) You must refrain from the violation of any State or Federal penal laws.
- (b) You must refrain from the use of all drugs

except those specifically authorized by the Saint Vincent Alcoholic treatment program, New York, New York, as Administered by Dr. James McGowan, or his duly authorized representative (hereinafter referred to as your doctor).

- (c) You must refrain from the use of alcohol.
- (d) You must remain hospitalized for as long as your doctor recommends.
- (e) You must participate in any counseling, treatment or out patient program as recommended by your doctor.
- (f) You and the hospital must cooperate with the U.S. Attorney and your lawyer before you are discharged from in-patient treatment.

This provisional release is subject to your being found acceptable by the Saint Vincent Alcoholic treatment program, New York, New York, as administered by Dr. James McGowan.

The special conditions are as follows:

BMS:rs

The United States Attorney may at any time revoke or modify any condition of this provisional release or change the period of supervision. Should you violate any of the foregoing conditions or cease to be a satisfactory participant in the approved program, the United States Attorney may at any time, within the twelve-month period of supervision, initiate prosecution for these offenses.

If, upon the completion of your period of supervision, a written report from the clinic is received to the effect that you have fully complied with all of the above conditions and have remained a satisfactory participant in the approved program, no prosecution will be instituted in this District for the above offense.

Dated:

Dec 20, 1973

Paul J. Curran
United States Attorney

By:

David A. Cohen

The undersigned hereby consent to the foregoing and expressly waive any and all rights to a speedy trial and the Second Circuit Rules Regarding the Prompt Disposition of Criminal Cases or other pertinent provisions, consent to the adjournment of all pending proceedings, and agree to permit disclosure to the United States Attorneys office consistent with Section 408 of Public Law 92-255 and regulations issued pursuant thereto of such treatment records as are necessary to determine compliance with the conditions governing deferral of prosecution in this case.

Nicholas H.
Attorney for Defendant

Michael J. Rogarty
Defendant

The foregoing waiver of the defendant's right to a speedy trial is approved under Rule 5(b) of the Second Circuit Rules Regarding the Prompt Disposition of Criminal Cases.

Dated:

12/20/73

[Signature]
Magistrate

DATE: July 1, 1975

FILE NO. 73-0790
73M335

MEMORANDUM TO THE U.S. MAGISTRATE

Please dismiss the complaint in the case of
United States v.s. MICHAEL GOGARTY on my
recommendation. Complaint filed on March 12, 1973

Bart M. Schwartz
ASSISTANT UNITED STATES ATTORNEY
BART M. SCHWARTZ

73-150
73-0790
73-17335
FILE NO. 73-3672

DATE: July 3, 1975

MEMORANDUM TO THE U.S. MAGISTRATE

Please dismiss the complaint in the case of
United States v.s. Michael Gogarty on my
recommendation. Complaint filed on November 7, 1973

X *Magistrate*
Burt M. Schwartz
ASSISTANT UNITED STATES ATTORNEY

AUSA: B. SCHWARTZ

UNITED STATES MAGISTRATE

SOUTHERN

DISTRICT OF

NEW YORK

RECORD OF PROCEEDINGS IN CRIMINAL CASES

BEFORE MARTIN D. JACOBS

(Name of magistrate)

U.S. COURTHOUSE, FOLEY SQ. N.Y.

(Address)

MAGISTRATE'S

DOCKET NO. 73 CASE NO. 1568

THE UNITED STATES

vs.

MICHAEL GOGARTY

Complaint filed on November 7, 19 73, by Thomas W. Doyle
Official title Special Agent, S.S., charging violation of
United States Code, Title 18, Section 111, on March 11
1973, at New York in the
division of the Southern district of New York
as follows: assault and resist a Federal Officer, while
in performance of his duties

(Here insert brief summary of facts constituting offense charged)

WARRANTS OR SUMMONS ISSUED:

Date November 7, 1973 Warrant/Summons for Michael Gogarty

(Name of defendant)

to (name and title of officer) any U.S. Marshal, or any other duly authorized officer
Substance of return Received U.S. Marshal, SDNY on 11/10/73 and executed by arrest of subject
at 34th St. & Lexington Ave. on 11/10/73 by Thomas W. Doyle, Special Agent, S.S.

Date Warrant/Summons for

(Name of defendant)

to (name and title of officer)

Substance of return

PROCEEDINGS ON FIRST PRESENTATION OF ACCUSED TO Magistrate Judge Inzer Wyatt

Date November 10, 1973 Arrested by Thomas W. Doyle

on warrant of Martin D. Jacobs

(Name of issuing officer)

without warrant.

Appearances

for United States Bart Schwartz, AUSA

(Name)

(Address)

for accused Legal Aid

15 Park Row, N.Y.

(Address)

Proceedings taken November 10, 1973, defendant informed of complaint, right to retain counsel,

(Here insert with dates, when appropriate, a serial account of essential steps taken at hearing such as "complaint prepared,"

and preliminary hearing. Hearing date set for 11/19/73

if arrest is without warrant: "defendant informed of complaint and right to retain counsel and preliminary hearing": "preliminary examination waived,"

if that is the fact; any adjournments taken, etc.

Outcome (over)

Bail fixed November 10, 19 74 Amount, \$ 5,000 Bonded 19, by

deposited by (name) Address

transmitted to clerk of district court 19 [or] by

(name) Address

(name) Address

justified by affidavit dated 19, [or] committed to U.S. Marshal, SDNY

on November 10, 19 73

SUBPOENAS FOR WITNESSES ISSUED:

_____, 19____, for (name of witness) _____
 at request of (name of party) _____
 Substance of return _____

_____, 19____, for (name of witness) _____
 at request of (name of party) _____
 Substance of return _____

_____, 19____, for (name of witness) _____
 at request of (name of party) _____
 Substance of return _____

PRELIMINARY EXAMINATION: **Gerard Goettel**
 (Not to be used if case was disposed of at first presentation)

Date January 8, 1974 Appearances for

United States (Name) Bart Schwartz, AUSA
 (Address) New York
 Accused (Name) Legal Aid
 (Address) 15 Park Row, N.Y.

WITNESSES FOR UNITED STATES: (List names and addresses)

WITNESSES FOR ACCUSED: (List names and addresses)

Witness payroll containing _____ names certified to United States Marshal for payment _____, 19____
 Proceedings taken January 8, 1974, defendant brought before me, with the consent of
government defendant released on his own recognizance, defendant to call U.S. Attorney's
office and to report to Dr. Zaris.

Outcome July 3, 1975, proceedings dismissed by government

Bail fixed _____, 19____ Amount, \$ _____ Bonded _____, 19____, by cash
 deposited by (name) _____ Address _____
 transmitted to clerk of district court _____, 19____
 [or] by surety (names) _____ Address _____
 and _____ Address _____
 who justified by affidavit _____, 19____ Committed to _____
 on _____, 19____

Certified to be a correct transcript.

Made this _____ day of _____, 19____

Transmitted to Clerk of United States District Court for the _____
 district of _____, 19____

[Signature]
 United States Magistrate.

Certificate of Service

Jan 26, 1976

I certify that a copy of this ~~brief~~ appendix has been mailed to the United States Attorney for the Southern District of New York.

Nathan J. Silbermann